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Attorneys for Plaintiff, Environmental World Watch, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES--UNLIMITED
BC337618

ENVIRONMENTAL WORLD WATCH, INC., in the public interest,)

THE PROCTER AND GAMBLE DISTRIBUTING COMPANY, FRITO-LAY, INC., and DOES 1-100,

v.

Plaintiff,

Defendants,

1.

CONFORMED COPY

OF ORIGINAL FILED
Los Angeles Superior Court

AUG 03 2005

John A. Clarke, Executive Officer/Clerk
Deputy

J. SUNGA

Case No.

COMPLAINT FOR VIOLATION OF PROPOSITION 65, THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (Health & Saf Code, §§ 25249.5, et seq.)

Unlimited Civil Case (Amount Demanded
Exceeds \$25,000)

COPY

Plaintiff ENVIRONMENTAL WORLD WATCH, INC. ("EWW") is a corporation

qualified to do business in the State of California. It brings this action in the public interest as

defined under Health & Saf Code, § 25249.7, subd. (d).

I

COWLAINT FOR VIOLATION OF PROPOSITION 65, THE SAFE DRINKING WATER AND TOXIC
ENFORCEMENT ACT OF 1986 (Health & Saf. Code, §§ 25249.5, et seq.)

By _____

1 2. Defendant The Procter and Gamble Distributing Company is and at all times mentioned
2 herein was qualified to do business in California, and at all times mentioned herein has
3 conducted business throughout California, including the county of Los Angeles. 4 5 3. Defendant
Frito-Lay, Inc. is and at all times mentioned herein was qualified to do
6 business in California, and at all times mentioned herein has conducted business throughout
7 California, including the county of Los Angeles.

8 4. EWW is ignorant of the true names and capacities of defendants Does I -100, and
9 therefore sues these defendants by such fictitious names. EWW will amend this complaint to 10 11 allege
their true names and capacities when ascertained. EWW is informed, believes, and
12 thereon alleges that each fictitiously named defendant is responsible in some manner for the
13 occurrences herein alleged and the damages caused thereby.

14
15 5. At all times mentioned herein, "Defendants" include The Procter and Gamble
16 Distributing Company and Frito-Lay, Inc., as well as Does I -100.

17 6. At all times mentioned each defendant was a "[p]erson in the course of doing business"
18 within the meaning of Health & Saf Code, § 25249.11, subd. (b). EWW is informed, believes,
19 and thereon alleges that at all times mentioned herein each defendant had ten or more employees.
20

21 7. The Court has jurisdiction over this lawsuit pursuant to Cal. Const., art. VI, § 10, which
22 grants the Superior Court original jurisdiction in all causes except those given by statute to other
23 trial courts.

24 FIRST CAUSE OF ACTION

25
26 **(BY EWW AGAINST ALL DEFENDANTS FOR VIOLATION OF PROPOSITION 65
(Health & Saf. Code, §§ 25249.5, et seq.)**

27 8. EWW repeats and incorporates by reference the previous paragraphs of this complaint as
28 though fully set forth herein.

1 9. Defendants are and at all times mentioned herein were engaged in the business of
2 manufacturing and/or distributing snack food products, including various potato and corn chips
3 products, in California.

4
5 10. Defendant The Procter and Gamble Distributing Company manufactures and/or
6 distributes, including -but not limited to, Pringles Regular, Pringles Ridges, Pringles Reduced Fat
7 Pringles Fat Free, and Snack Stacks, which are potato chips products that contain acrylamide.

8 11. Defendant Frito-Lay, Inc. manufactures and/or distributes, including but not limited to,
9 Frito Brand Chips and Tostitos Brand Tortilla Chips, which are corn chips products that contain 10 11
acrylamide.

12 12. Acrylamide is a chemical known and listed under Proposition 65 as causing cancer. On
13 January 1, 1990, acrylamide first appeared on the Governor's Proposition 65 list as a chemical
14 known to cause cancer. (Cal. Code Regs., tit 22, §12000, subd. (b)) Pursuant to Health & Saf
15 Code, § 25249.9, twenty months after first appearing on the Governor's Proposition 65 list,
16 acrylamide became subject to Proposition 65 warning requirements.

17
18 13. Recent scientific studies released by the Office of Environmental Health Hazard
19 Assessment reveal that even at "lower bound" estimates of acrylamide intake, the level of
20 exposure to acrylamide through the ingestion of certain fried vegetable and grain products is far 21 22 greater
than the no significant risk level ("NSRL), or the allowed 'safe harbor', for acrylamide.

23 The current safe harbor or NSRL of acrylamide intake is .2 gg/day. The NSRL is the daily
24 intake level calculated to result in one excess case of cancer in an exposed population of
25 100,000, assuming lifetime (70-year) exposure at the level in question.

26
27 14. Because Defendants' potato and corn chips products contain levels of acrylamide that
28 exceed the NSRL for acrylamide, Proposition 65 required Defendants to first give clear and

1 reasonable warning to persons in California who consume their potato and corn chips products
2 that-their potato and corn chips products contain acrylamide and that the acrylamide contained in
3 their potato and corn chips products causes cancer before Defendants knowingly and
4 intentionally exposed such individuals to the acrylamide contained in their potato and corn chips
5 products.
6

7 15. Defendants did not first give clear and reasonable warning in any manner or in any
8 medium to persons in California who consume their potato and corn chips products that their
9 potato and corn chips products contain acrylamide and the acrylamide contained in their potato
10 and corn chips products causes cancer before Defendants knowingly and intentionally exposed
11 such individuals to the acrylamide contained in their potato and corn chips products. Defendants
12 packaged their products without the warnings required by Cal. Code Regs., tit, 22, § 1260 1,
13 which would have supplied the persons who actually ate the products and suffered exposure to
14 acrylamide with important health information required by said regulation. The exposures took
15 place off Defendants' properties and away from any source of conspicuous warning such as a
16 sign at the point of sale.
17
18

19 16. Therefore, EWW is informed, believes, and thereon alleges that from 1991 to the
20 present, Defendants have knowingly and intentionally exposed persons who consume their
21 potato and corn chips products in California to acrylamide, a chemical known and listed under
22 Proposition 65 as causing cancer, without first giving clear and reasonable warning of such to the
23 persons exposed or the persons who purchased their potato and corn chips products. The persons
24 exposed are persons who consumed Defendants' potato and corn chips products by eating them.
25 Defendants thereby violated Proposition 65. The route of exposure was through ingestion.
26
27
28

1 17. Exposures to acrylamide occurred through ingestion every time a person consumed by
2 eating the acrylamide-containing potato and corn chips products Defendants had manufactured
3 and/or distributed between 1991 and the present.

4
5 18. On June 26, 2002, EWW sent notices of alleged violations of Proposition 65 subject to a
6 private action, as described in the foregoing paragraphs, to the Attorney General and applicable
7 district attorneys and city attorneys in whose jurisdictions the violations allegedly occurred, and
8 to the alleged violators, The Procter and Gamble Distributing Company and Frito-Lay, Inc. 9

10 19. In March of 2003, EWW sent notices of alleged violations of Proposition 65 subjects to a
11 private action, as described in the foregoing paragraphs, to the Attorney General and applicable
12 district attorneys and city attorneys in whose jurisdictions the violations allegedly occurred, and
13 to the alleged violators, The Procter and Gamble Distributing Company and Frito-Lay, Inc.

14 20. EWW gave these notices, and filed this action, more than twenty months after acrylamide
15 first appeared on the Governor's Proposition 65 list, and after acrylamide became subject to
16 Proposition 65 warning requirements.

17
18 21. EWW's notices of the alleged violations sent to The Procter and Gamble Distributing
19 Company and Frito-Lay, Inc. included certificates of merit executed by the attorney for the
20 noticing party, EWW. The certificate of merit stated that the attorney for EWW who executed 21 22 the
certificate had consulted with at least one person with relevant and appropriate expertise who
23 had reviewed data regarding the exposures to acrylamide that are the subjects of the action.

24 Based on that information, the attorney for EWW who executed the certificate believed there
25 was a reasonable and meritorious case for this private action. The attorney for EWW attached to
26 the certificate of merit served on the Attorney General information sufficient to establish the 27
28 basis of the certificate of merit.

1 22. Plaintiff s allegations concern a "consumer product exposure." A "consumer product
2 exposure" is an exposure that results from a person's acquisition, purchase, storage,
3 consumption, or other reasonably foreseeable use of a consumer good. Potato and corn chips
4 products are consumer products. Since Defendants' products identified in Paragraphs 10 and 11
5 contain acrylamide, the reasonably foreseeable use and consumption by eating of said products
6 resulted in exposures to acrylamide through ingestion.
7

8 23, EWW is commencing this action more than sixty days from the date that EWW gave
9 notice of the alleged violations to The Procter and Gamble Distributing Company, Frito-Lay,
10 Inc., to the Attorney General, and to applicable district attorneys and city attorneys in whose
11 jurisdictions the violations allegedly occurred.
12

13 24. EWW is informed, believes, and thereon alleges that neither the Attorney General, nor
14 any applicable district attorney or city attorney, has commenced and is diligently prosecuting an 15 16 action against
the violations alleged in its notices sent to The Procter and Gamble Distributing
17 Company and Frito-Lay, Inc.

18 25. At all times relevant to this action, Defendants knew they were exposing persons who
19 consumed their potato and corn chips products to acrylamide without first giving clear and
20 reasonable warning of such to the persons exposed or the persons who purchased the potato and
21 corn chips products and Defendants intended such conduct.
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PRAYER FOR RELIEF

EWV demands against each defendant as follows:

- I. A permanent injunction;
- 2. Penalties pursuant to Health & Saf Code, § 25249.7, subd. (b) of \$2,500.00 per day per violation;
- 3. Costs of suit;
- 4. Reasonable attorney's fees and costs; and
- S. Any further relief the court may deem just and equitable.

Dated: _____ h-wm -,,, i ol~

YEROUSHALNU & ASSOCIATES

Reu n Yeroughalmi Attorneys for Plaintiff, Environmental World Watch, Inc.

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